

117TH CONGRESS
2D SESSION

S. 3772

To amend title 35, United States Code, to limit foreign interference with respect to the right to file and maintain a patent infringement claim, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 8 (legislative day, MARCH 7), 2022

Mr. TILLIS (for himself, Mr. COONS, Mr. COTTON, Ms. HIRONO, and Mr. SCOTT of Florida) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 35, United States Code, to limit foreign interference with respect to the right to file and maintain a patent infringement claim, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Defending American
5 Courts Act”.

6 **SEC. 2. LIMITING FOREIGN INTERFERENCE.**

7 (a) IN GENERAL.—Chapter 28 of title 35, United
8 States Code, is amended by adding at the end the fol-
9 lowing:

1 **“§ 274. Foreign interference**

2 “(a) DEFINITION.—In this section, the term ‘anti-
3 suit injunction’ means an injunction issued by a foreign
4 tribunal that purports to restrict the rights of a person
5 to file or maintain—

6 “(1) a claim of infringement of any claim of a
7 United States patent in a tribunal of the United
8 States, including—

9 “(A) in a civil action arising in whole or in
10 part under section 1338 of title 28; or

11 “(B) in a proceeding before the United
12 States International Trade Commission pursu-
13 ant to section 337 of the Tariff Act of 1930 (19
14 U.S.C. 1337); or

15 “(2) any appeal from a civil action or pro-
16 ceeding described in paragraph (1), including any
17 appeal arising under paragraph (1) or (6) of section
18 1295(a) of title 28.

19 “(b) CIVIL ACTION PRESUMPTIONS.—Upon a finding
20 of infringement of a patent under section 271 in a civil
21 action against any person that has asserted an anti-suit
22 injunction in any tribunal of the United States seeking
23 to restrict the claim of infringement of the patent on the
24 basis of the anti-suit injunction, the court shall presume
25 that—

1 “(1) the infringement is willful when deter-
2 mining whether to increase damages under section
3 284; and

4 “(2) the action is exceptional when determining
5 whether to award attorney fees under section 285.

6 “(c) PATENT TRIAL AND APPEAL BOARD.—In deter-
7 mining whether to institute a review under chapter 31 or
8 32 with respect to a patent, the Director shall decline to
9 institute such a review if the petitioner, real party in inter-
10 est, or privy of the petitioner has asserted an anti-suit in-
11 junction in any tribunal of the United States seeking to
12 restrict a claim for infringement of the patent on the basis
13 of the anti-suit injunction.

14 “(d) CONSENT OR PRIOR AGREEMENT.—Neither
15 subsection (b) nor (c) shall apply if—

16 “(1) the person subject to the applicable anti-
17 suit injunction consents to be bound by the anti-suit
18 injunction; or

19 “(2) the applicable anti-suit injunction was
20 issued to enforce a contractual agreement between
21 the parties to submit disputes concerning the patent
22 that is the subject of the anti-suit injunction to reso-
23 lution by a specified court or arbitral tribunal.”.

24 (b) TABLE OF SECTIONS AMENDMENT.—The table of
25 sections for chapter 28 of title 35, United States Code,

1 is amended by inserting after the item relating to section
2 273 the following:

“274. Foreign interference.”.

3 **SEC. 3. STUDY ON PATENTS AND ANTI-SUIT INJUNCTIONS.**

4 (a) **STUDY REQUIRED.**—The Under Secretary of
5 Commerce for Intellectual Property and Director of the
6 United States Patent and Trademark Office (referred to
7 in this section as the “Director”), in consultation with the
8 head of any other appropriate agency, shall conduct a
9 study that examines—

10 (1) the importance of patents to the techno-
11 logical leadership of the United States in critical and
12 emerging technologies, including by incentivizing re-
13 search and development in innovation and standards
14 development in the United States; and

15 (2) the harms resulting from anti-suit injunc-
16 tions, as that term is defined in section 274(a) of
17 title 35, United States Code, as added by section 2
18 of this Act.

19 (b) **REPORT.**—Not later than 1 year after the date
20 of enactment of this Act, the Director shall submit to the
21 Committee on the Judiciary of the Senate and the Com-
22 mittee on the Judiciary of the House of Representatives
23 a report on the results of the study conducted under sub-
24 section (a).